

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

<b>IN THE MATTER OF:</b>	)	COMPLAINT NO. R9-2002-003
	)	
<b>PROMENADE, INC.</b>	)	FOR
<b>PACIFIC BEACH PROMENADE</b>	)	ADMINISTRATIVE CIVIL LIABILITY
<b>DEWATERING</b>	)	February 11, 2002
<b>NONCOMPLIANCE WITH</b>	)	
<b><u>ORDER NO. 96-41</u></b>	)	

**PACIFIC BEACH PROMENADE IS HEREBY GIVEN NOTICE THAT:**

1. Promenade, Inc. is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (SDRWQCB) may impose civil liability pursuant to the Porter-Cologne Water Quality Control Act, California Water Code (CWC), Section 13385 et seq.
2. A public hearing on this matter is scheduled before the SDRWQCB meeting on April 10, 2002 at the San Diego Regional Water Quality Control Board Office, located at 9174 Sky Park Court, San Diego. The meeting will begin at 9:00 am. At the hearing, Promenade, Inc. will have the opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the SDRWQCB. Additional notice of this public hearing and the hearing procedures will be provided to Promenade, Inc. prior to the hearing date with the agenda for the SDRWQCB meeting on that date.
3. At the hearing, the SDRWQCB will determine the validity of the allegations contained herein and, if the allegations are found to be true, will consider whether to assess civil liability in the amount proposed by this Complaint, or in some other amount.

**ALLEGATIONS**

4. During the period from March 2000 through August 2001 Promenade, Inc. violated Order No. 96-41, *NPDES No. CAG919002, General Waste Discharge Requirements for Groundwater Extraction and Similar Waste Discharges from Construction and Remediation Projects to Surface Waters within the San Diego Region Except for San Diego Bay*. Effluent limit exceedances of cyanide, copper, total suspended solids, zinc, chronic toxicity and pH were noted in the Discharger Self-Monitoring Reports during this time period.

## **BACKGROUND**

5. The following facts are the basis for the alleged violations in this matter:

Pacific Beach Promenade is approved to discharge the effluent from its dewatering project to Mission Bay under the provisions of Order No. 96-41. Table 1 (attached) summarizes the discharge limitations set forth in Order No. 96-41 and the violations by Pacific Beach Promenade during the period in question.

6. Under California Water Code Section 13385(c), the maximum administrative civil liability which could be imposed by the Regional Board for the violations described in the Findings of this complaint is ten thousand dollars (\$10,000) for each day in which a violation occurs and ten dollars (\$10.00) per gallon for each gallon discharged and not cleaned up. For this complaint, which includes 26 violations, the maximum administrative civil liability (ACL) which could be imposed by the Regional board is **seven million one hundred sixty eight thousand dollars (\$7,168,000)** based on the following:

$$26 \text{ VIOLATIONS} \times \$10,000 \text{ PER DAY} = \$260,000$$

Violation Date	Daily Flow	Flow Applicable to Penalty	Penalty
3/31/00	62,900	61,900	\$619,000
6/23/00	44,336	43,336	\$433,360
9/28/00	53,278	52,278	\$522,780
10/30/00	306,646	305,646	\$3,056,460
12/29/00	53,040	52,040	\$520,400
2/27/01	127,670	126,670	\$1,266,700
6/18/01	25,110	24,110	\$241,100
6/21/01	26,970	25,970	\$259,700
8/23/01	23,250	22,250	\$222,500
TOTAL PER GALLON ASSESSMENT		714,200	\$7,142,000

$$714,200 \text{ GALLONS} \times \$10.00 \text{ PER GALLON} = \$7,142,000$$

7. These exceedances are also violations of California Water Code Section 13385(i) and are therefore subject to mandatory minimum penalties. Under California Water Code Section 13385(h) and (i), the amount of the mandatory minimum penalty that must be assessed is \$78,000, as determined by the following statutes:
- a. Water Code Section 13385(h)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for the first serious violation in any six-month period, or, in lieu of the penalty, require the

discharger to spend an equal amount for a supplemental environmental project, or to develop a pollution prevention plan.

- b. Water Code Section 13385(i)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first violation, if the discharger commits two or more serious violations in any six-month period.
- c. Water Code Section 13385(i)(2) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in any six-month period:
  - Exceeds a waste discharge requirement effluent limitation.
  - Fails to file a report pursuant to Water Code Section 13260.
  - Files an incomplete report pursuant to Water Code Section 13260.
  - Exceeds a toxicity discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

The 26 violations are assessed \$3,000 per violation, giving a total mandatory minimum penalty of \$78,000.

### **PROPOSED CIVIL LIABILITY**

8. Based on consideration of the factors listed in Section 13385(e) of the California Water Code, civil liability should be imposed on Promenade, Inc. by the SDRWQCB in the amount of \$78,000, the amount of the mandatory minimum penalty, for the above violations.

### **WAIVER OF HEARING**

9. Promenade Inc. may waive its right to a hearing. Waiver of the hearing constitutes admission of the validity of the allegation of violations in this Complaint and acceptance of the assessment of civil liability in the amount of \$78,000 as set forth in Paragraph 8. If Promenade Inc. wishes to waive the hearing, an authorized agent must check, sign, and return the waiver form attached to this Complaint, together with a cashier's check for the amount of the civil liability proposed in Paragraph 8. The cashier's check must be made payable to the State Water Resources Control Board and mailed to the California Regional Water Quality Control Board, San Diego Region, 9174 Sky Park Court, Suite 100, San Diego, Ca, 92123. If a hearing is held, comments from Promenade Inc. and interested parties may be considered by the SDRWQCB in determining the amount of civil liability to assess. Following the hearing, the SDRWQCB may impose an amount of civil liability other than that proposed in this Complaint or

revoke the Complaint and refer the matter to the Attorney General for judicial assessment of civil liability (with higher maximum liabilities for each violation). Please direct questions about this matter to Rebecca Stewart at (858) 467-2066 or via e-mail at [stewr@rb9.swrcb.ca.gov](mailto:stewr@rb9.swrcb.ca.gov).

Dated this 11<sup>th</sup> day of February 2002

By: \_\_\_\_\_  
John H. Robertus  
Executive Officer

Table 1. Violation Summary for Pacific Beach Promenade Dewatering, March 2000 through August 2001.

Date of Violation	Violation	Permitted Limit	Reported Value	Pollutant Category	Ratio, Reported: Permitted	Serious/ Chronic	Water Code Section 13385	Penalty
3/31/00	TSS instantaneous max	50 mg/L	135 mg/L	1	2.7	Serious	(h)(1)	\$3,000
3/31/00	TSS 30-day average	30 mg/L	135 mg/L	1	4.5	Serious	(h)(1)	\$3,000
6/23/00	cyanide inst. max	10 µg/L	340 µg/L	2	34	Serious	(h)(1)	\$3,000
6/23/00	cyanide daily max	4 µg/L	340 µg/L	2	85	Serious	(h)(1)	\$3,000
6/23/00	cyanide 6-month median	1 µg/L	340 µg/L	2	340	Serious	(h)(1)	\$3,000
9/28/00	TSS instantaneous max	50 mg/L	120 mg/L	1	2.4	Serious	(h)(1)	\$3,000
9/28/00	TSS 30-day average	30 mg/L	120 mg/L	1	4	Serious	(h)(1)	\$3,000
10/30/00	pH daily max	6.5 – 8.5	9.4	N/A	N/A	Chronic	(i)(1)	\$3,000
10/30/00	TSS instantaneous max	50 mg/L	101 mg/L	1	2	Serious	(h)(1)	\$3,000
10/30/00	TSS 30-day average	30 mg/L	101 mg/L	1	3.4	Serious	(h)(1)	\$3,000
12/29/00	TSS instantaneous max	50 mg/L	58 mg/L	1	1.2	Chronic	(i)(1)	\$3,000
12/29/00	TSS 30-day average	30 mg/L	58 mg/L	1	1.9	Serious	(h)(1)	\$3,000
12/29/00	copper daily max	12 µg/L	200 µg/L	2	16.7	Serious	(h)(1)	\$3,000
12/29/00	copper instantaneous max	30 µg/L	200 µg/L	2	6.7	Serious	(h)(1)	\$3,000
12/29/00	copper 6-month median	3 µg/L	200 µg/L	2	66.7	Serious	(h)(1)	\$3,000
12/29/00	zinc daily max	80 µg/L	3000 µg/L	2	37.5	Serious	(h)(1)	\$3,000
12/29/00	zinc instantaneous max	200 µg/L	3000 µg/L	2	15	Serious	(h)(1)	\$3,000
12/29/00	zinc 6-month median	20 µg/L	3000 µg/L	2	150	Serious	(h)(1)	\$3,000
2/27/01	zinc instantaneous max	200 µg/L	500 µg/L	2	2.5	Serious	(h)(1)	\$3,000
2/27/01	zinc daily max	80 µg/L	500 µg/L	2	6.3	Serious	(h)(1)	\$3,000
2/27/01	zinc 6-month median	20 µg/L	500 µg/L	2	25	Serious	(h)(1)	\$3,000
6/18/01	chronic toxicity	1 TUc	2 TUc	N/A	N/A	Chronic	(i)(1)	\$3,000
6/21/01	copper instantaneous max	30 µg/L	200 µg/L	2	6.7	Serious	(h)(1)	\$3,000
6/21/01	copper daily max	12 µg/L	200 µg/L	2	16.7	Serious	(h)(1)	\$3,000
6/21/01	copper 6-month median	3 µg/L	200 µg/L	2	66.7	Serious	(h)(1)	\$3,000
8/23/01	chronic toxicity	1 TUc	16 TUc	N/A	N/A	Chronic	(i)(1)	\$3,000
							Total Penalty	\$78,000